

06-17-20 AN ORDINANCE

TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT EXCEEDING ONE MILLION ONE HUNDRED TWENTY-FIVE THOUSAND (\$1,125,000) GENERAL OBLIGATION REFUNDING BONDS OF NEWBERRY COUNTY, SOUTH CAROLINA, TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS OF SUCH OBLIGATIONS SHALL BE EXPENDED, TO PROVIDE FOR THE PAYMENT THEREOF, AND OTHER MATTERS RELATING THERETO.

TABLE OF CONTENTS

Page

ARTICLE I
FINDINGS OF FACT

Section 1.01 Findings and Determinations..... 1
Section 1.02 Recital of Statutory and Constitutional Authorization..... 1

ARTICLE II
DEFINITIONS AND CONSTRUCTION

Section 2.01 Definitions..... 2
Section 2.02 Construction..... 4

ARTICLE III
ISSUANCE OF BONDS

Section 3.01 Ordering the Issuance of Bonds..... 5
Section 3.02 Maturity Schedule of Bonds. 5
Section 3.03 Medium of Payment; Form and Denomination of Bonds; Place of
Payment of Principal..... 5
Section 3.04 Execution and Authentication..... 5
Section 3.05 Exchange of Bonds. 6
Section 3.06 Transferability and Registry. 6
Section 3.07 Transfer of the Bond. 6
Section 3.08 Regulations with Respect to Exchanges and Transfers. 6
Section 3.09 Mutilated, Destroyed, Lost and Stolen Bonds..... 7
Section 3.10 Holder As Owner of Bond. 7
Section 3.11 Cancellation of Bonds..... 7
Section 3.12 Payments Due on Saturdays, Sundays and Holidays..... 7
Section 3.13 Tax Exemption in South Carolina..... 8
Section 3.14 Order of Tax Levy to Pay Principal and Interest of Bonds..... 8
Section 3.15 Notice to Auditor and Treasurer. 8
Section 3.16 Form of Bonds. 8

ARTICLE IV
REDEMPTION OF BONDS

Section 4.01 Redemption of Bonds. 9

ARTICLE V
SALE OF BONDS

Section 5.01 Sale and Award of Bonds. 10

TABLE OF CONTENTS

Page

ARTICLE VI
DISPOSITION OF PROCEEDS OF SALE OF BONDS

Section 6.01 Disposition of Bond Proceeds Including Temporary Investments. 11

ARTICLE VII
DEFEASANCE OF BONDS

Section 7.01 Discharge of Ordinance - Where and How a Bond is Deemed to Have
Been Paid and Defeased..... 12

ARTICLE VIII
FEDERAL TAX CONSIDERATIONS

Section 8.01 Covenants to Comply with Requirements of the Code..... 13

Section 8.02 Qualified Tax-Exempt Obligation. 13

Section 8.03 Ability to Meet Arbitrage Requirements. 14

Section 8.04 Continuing Disclosure. 14

ARTICLE IX
MISCELLANEOUS

Section 9.01 Severability of Invalid Provisions..... 15

Section 9.02 Successors. 15

Section 9.03 Ordinance to Constitute Contract..... 15

Section 9.04 Filing of Copies of Ordinance..... 15

Section 9.05 Officials Authorized..... 15

Section 9.06 Effective Date. 16

EXHIBIT "A" –FORM OF BONDS

EXHIBIT "B" – FORM OF NOTICE OF SALE

ARTICLE I

FINDINGS OF FACT

As an incident to the enactment of this Ordinance and the issuance of the bonds provided for herein, the County Council of Newberry County (the "Council"), the governing body of Newberry County, South Carolina (the "County") finds that the facts set forth in this Article exist, and the statements made with respect thereto are true and correct:

Section 1.01 Findings and Determinations.

(a) The County is a duly constituted body politic and political subdivision of the State of South Carolina (the "State").

(b) The Council heretofore issued its \$1,000,000 General Obligation Bonds, Series 2018A (the "Series 2018A Bonds") and its \$325,000 General Obligation Bonds, Series 2018B (the "Series 2018B Bonds" and collectively with the 2018A Bonds, the "Refunded Bonds") for the purposes of defraying the costs of certain improvements to facilities of the County and to pay costs of issuance of such bonds.

(c) There currently remains outstanding \$822,124 aggregate principal amount of the Series 2018A Bonds \$268,874 aggregate principal amount of the Series 2018B Bonds, both of which mature on March 1 in the years 2021 through 2028, and which are subject to redemption prior to maturity in whole, at any time without penalty, at a redemption price of par together with accrued interest to the date fixed for redemption.

(d) In order to raise the moneys necessary to pay for the cost of refunding the Refunded Bonds and to pay the costs of issuance to be incurred in connection therewith, the Council has determined to issue general obligation bonds of the County in the principal amount of not exceeding \$1,125,000 and to use the proceeds of the sale of such bonds for such purposes and for certain costs related to the issuance of the bonds.

Section 1.02 Recital of Statutory and Constitutional Authorization.

Article 5, Chapter 15, Title 11 of the Code of Laws of South Carolina 1976, as amended (the "Refunding Act"), the County is authorized to effect the refunding of any of its outstanding bonds provided that a savings can be effected through refunding, and for such amounts as shall be required to provide for the payment of all outstanding bonds maturing subsequent to the date on which the refunding bonds shall be issued and such further amount as shall be required to effect the payment of any redemption premium of the outstanding bonds.

The refunding of the Refunded Bonds does not create a new indebtedness, but merely continues an existing indebtedness, and thus the County may borrow the sum of not exceeding \$1,125,000 to refund the Refunded Bonds without reference to its debt limit established under Art. X, §14 of the South Carolina Constitution, provided a savings results therefrom.

[End of Article I]

ARTICLE II

DEFINITIONS AND CONSTRUCTION

Section 2.01 Definitions.

As used in this Ordinance unless the context otherwise requires, the following terms shall have the following respective meanings:

“Authorized Investments” means and includes such investments as are approved for political subdivisions of the State pursuant to the Code of Laws of South Carolina, 1976, as now or hereafter amended.

“Authorized Officer” means the Chairman, the Vice-Chairman, the County Administrator, and the Clerk to Council of the County, and any other officer or employee of the County designated from time to time as an Authorized Officer by resolution of the Council, and when used with reference to any act or document also means any other person authorized by resolution of the Council to perform such act or sign such document. During such time as a State of Emergency exists, the Chairman is empowered to designate any officer or employee of the County as an Authorized Officer.

“Bond” or “Bonds” means any of the Bonds of the County authorized by this Ordinance.

“Bond Counsel” means Haynsworth Sinkler Boyd, P.A. or other firm of nationally-recognized bond counsel duly engaged by the County with respect to issuance of the Bonds.

“Bondholder” or “Holder” or “Holders of Bonds” or “Owner” or similar term means, when used with respect to a Bond or Bonds, any person who shall be registered as the owner of any Bond Outstanding.

“Bond Payments” mean the annual installments of principal of and interest on the Bonds payable on the Bond Payment Dates.

“Bond Payment Date” means March 1 of each year, commencing March 1, 2021, until the Bonds are paid in full.

“Chairman” means the Chairman of the Council.

“Council” means the County Council of Newberry County, the governing body of said County or any successor governing body of said County.

“County” means Newberry County, South Carolina.

“County Administrator” means the County Administrator of the County.

“County Request” means a written request of the County signed by an Authorized Officer.

“Enabling Act” shall have the meaning assigned thereto in **Section 1.02** of this Ordinance.

“Financial Advisor” means Compass Municipal Advisors LLC.

“Government Obligations” means and includes direct general obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which is fully and unconditionally guaranteed by the United States of America.

“Ordinance” means this Ordinance as the same may be amended or supplemented from time to time in accordance with the terms hereof.

“Outstanding”, when used in this Ordinance with respect to Bonds means as of any date, all Bonds theretofore authenticated and delivered pursuant to this Ordinance except:

(i) any Bond cancelled or delivered to the Registrar for cancellation on or before such date;

(ii) any Bond (or any portion thereof) deemed to have been paid in accordance with the provisions of **Section 7.01** hereof; and

(iii) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to **Section 3.11** of the Ordinance.

“Paying Agent” means the County Treasurer of Newberry County.

“Person” means an individual, a partnership, a corporation, a trust, a trustee, an unincorporated organization, or a government or an agency or political subdivision thereof.

“Principal Installment” means, as of any date of calculation, the principal amount of all Bonds due on a specified date.

“Record Date” means the 15th day of the month immediately preceding each Bond Payment Date.

“Refunded Bonds” shall have the meaning assigned thereto in **Section 1.01** of this Ordinance.

“Registrar” means the County, acting through the Clerk to Council or any other Authorized Officer.

“S.C. Code” means the Code of Laws of South Carolina, 1976, as amended.

“Series 2018A Bonds” shall have the meaning assigned thereto in **Section 1.01** of this Ordinance.

“Series 2018A Ordinance” shall mean the ordinance authorizing the Series 2018A Bonds enacted on January 3, 2018.

“Series 2018B Bonds” shall have the meaning assigned thereto in **Section 1.01** of this Ordinance.

“Series 2018B Ordinance” shall mean the ordinance authorizing the Series 2018B Bonds enacted on May 16, 2018.

“State of Emergency” means a period during which a proclamation issued by the Governor of the State of South Carolina, pursuant to Section 1-3-420 of the S.C. Code, remains effective in Newberry County.

“Vice-Chairman” means the Vice-Chairman of the Council.

Section 2.02 Construction.

In this Ordinance, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Ordinance.

(b) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Ordinance, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Ordinance.

(c) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) Any Fiduciary shall be deemed to hold an Authorized Investment in which money is invested pursuant to the provisions of this Ordinance, even though such Authorized Investment is evidenced only by a book entry or similar record of investment.

[End of Article II]

ARTICLE III

ISSUANCE OF BONDS

Section 3.01 Ordering the Issuance of Bonds.

Pursuant to the provisions of the Enabling Act, and for the purpose of obtaining funds for the purposes described in Section 1.01 of this Ordinance, there shall be issued, as one or more separate bonds, not exceeding One Million One Hundred Twenty-five Thousand (\$1,125,000) of general obligation refunding bonds of the County. The Bonds issued hereunder shall be designated by the year of issuance thereof, together with such other identifiers as the Chairman may deem appropriate upon advice of the Bond Counsel. The County Administrator may, in his sole discretion, determine that a Bond be issued as two or more separate series to reflect a difference in tax-exempt status, or any other basis not inconsistent with this Ordinance. The Bonds authorized hereby or portions thereof may be combined with and sold as a single issue with other general obligation bonds of the County to be hereafter sold, and satisfaction of the provisions of this Bond Ordinance or the ordinance authorizing the issuance of such other bonds (except as to the savings requirement in **Section 5.1** of this Bond Ordinance) shall be sufficient for the lawful execution and delivery of the Bonds.

Section 3.02 Maturity Schedule of Bonds.

A Bond shall be dated as of the date of its delivery and shall bear interest from its dated date. A Bond shall mature no earlier than five (5) years and no later than ten (10) years from its date of issue, shall be payable by the Bond Payments on the Bond Payment Dates, all as determined by the County Administrator, upon the advice of the Financial Advisor.

Section 3.03 Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal.

(a) A Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) A Bond shall be issued in the form of one (1) fully registered bond with a single, fixed rate of interest.

(c) A Bond Payment shall be payable to the Person appearing as the Holder of the applicable Bond on the Record Date on the registration books of the County, which books shall be held by the County as Registrar as provided in Section 3.06 hereof. Presentment of Bond as a condition of the payment of the final outstanding principal amount thereof is hereby waived.

Section 3.04 Execution and Authentication.

(a) The Bonds shall be executed in the name and on behalf of the County by the manual or facsimile signature of an Authorized Officer, with its corporate seal (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of its Clerk to Council or other Authorized Officer (other than the officer executing such Bonds). Bonds bearing the manual or facsimile signature of any Person who shall have been such an Authorized Officer at the time such Bonds were so executed shall bind the County notwithstanding the fact that he may have ceased to be such Authorized Officer prior to the authentication and delivery of such Bonds or was not such Authorized Officer at the date of the authentication and delivery of the Bonds.

(b) No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless there shall be endorsed on such Bond a certificate of authentication in the form set forth in the Ordinance, duly executed by the manual signature of the Registrar and such certificate of authentication upon a Bond executed on behalf of the County shall be conclusive evidence that the Bond so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of the Ordinance.

Section 3.05 Exchange of Bonds.

A Bond, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Holder or his duly authorized attorney, may, at the option of the registered Holder thereof, be exchanged for a new Bond of the same interest rate and maturity. So long as a Bond remains Outstanding, the County shall make all necessary provisions to permit the exchange of the Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid.

Section 3.06 Transferability and Registry.

A Bond shall at all times, when the same is Outstanding, be payable to a Person, and shall be transferable only in accordance with the provisions for registration and transfer contained in this Ordinance and in the Bond. So long as a Bond remains Outstanding, the Registrar shall maintain and keep, at its administrative office, books for the registration and transfer of the Bond, and, upon presentation thereof for such purpose at such office, the Registrar shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it may prescribe, such Bond. So long as the Bond remains Outstanding, the Registrar shall make all necessary provisions to permit the transfer of such Bond at its administrative office.

Section 3.07 Transfer of the Bonds.

A Bond shall be transferable only upon the books of the Registrar, upon presentation and surrender thereof by the Holder of the Bond in person or by his attorney duly authorized in writing, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of a Bond, the County shall execute, authenticate and deliver, in the name of the Person who is the transferee, a new Bond of the same principal amount and maturity and rate of interest as the surrendered Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid. Transfer of the Bond by any Holder thereof shall be subject to such terms and restrictions as negotiated by the County Administrator and the Purchaser of the Bond, upon advice of Bond Counsel the Financial Advisor, and the existence of such terms and restrictions shall be clearly noted on the face of a Bond.

Section 3.08 Regulations with Respect to Exchanges and Transfers.

A Bond surrendered in any exchange or transfer shall forthwith be cancelled by the Registrar. For each such exchange or transfer of the Bond, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The County shall not be obligated to issue, exchange or transfer a Bond during the 15 days next preceding the Bond Payment Date applicable thereto.

Section 3.09 Mutilated, Destroyed, Lost and Stolen Bonds.

(a) A Bond surrendered in any exchange or transfer shall forthwith be cancelled by the Registrar. For each such exchange or transfer of the Bond, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The County shall not be obligated to issue, exchange or transfer a Bond during the 15 days next preceding the Bond Payment Date applicable thereto.

(b) Upon the issuance of any new Bond under this **Section 3.09**, the County may require the payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the County or the Registrar connected therewith.

(c) Each new Bond issued pursuant to this Section in lieu of any destroyed, lost, or stolen Bond, shall constitute an additional contractual obligation of the County, whether or not the destroyed, lost, or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with the Bond duly issued pursuant to this Ordinance.

(d) A Bond shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond or securities.

Section 3.10 Holder As Owner of Bond.

In its capacity as Registrar, the County may treat the Holder of a Bond as the absolute owner thereof, whether the Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Bond Payment on the Bond and for all other purposes, and payment of the Bond Payment shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid, and the County shall not be affected by any notice to the contrary.

Section 3.11 Cancellation of Bonds.

The Registrar shall destroy a Bond when the same shall be surrendered to it for cancellation. In such event, such Bond shall no longer be deemed Outstanding under this Ordinance and no Bond shall be issued in lieu thereof.

Section 3.12 Payments Due on Saturdays, Sundays and Holidays.

In any case where a Bond Payment Date shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the Bond Payment need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the Bond Payment Date and no interest shall accrue for the period after such date.

Section 3.13 Tax Exemption in South Carolina.

Bond Payments shall be exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

Section 3.14 Order of Tax Levy to Pay Principal and Interest of Bonds.

For the payment of the Principal Installment and interest on a Bond as the same respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the County are hereby irrevocably pledged, and there shall be levied annually by the Auditor of Newberry County, South Carolina, and collected by the Treasurer of Newberry County, South Carolina, in the same manner as county taxes are levied and collected, a tax on all taxable property in said County, sufficient to pay the Principal Installment and interest on the Bonds as the same become due and to create such sinking fund as may be necessary therefor.

Section 3.15 Notice to Auditor and Treasurer.

The Auditor and Treasurer of Newberry County, South Carolina, shall be notified of the issuance of a Bond and directed to levy and collect annually upon all taxable property within the County ad valorem property taxes in an amount sufficient to pay the principal of and interest on such Bond as the same become due and to create such sinking fund as may be necessary therefor.

Section 3.16 Form of Bonds.

The form of a Bond, and registration provisions to be endorsed thereon, shall be substantially as set forth in Exhibit B attached hereto and made a part of this Ordinance.

[End of Article III]

ARTICLE IV

REDEMPTION OR BONDS

Section 4.01 Redemption of Bonds.

A Bond shall not subject to redemption prior to maturity as may be agreed to by the Holder thereof and the County. Any such terms of redemption shall be included in the Bond.

[End of Article IV]

ARTICLE V

SALE OF BONDS

Section 5.01 Sale and Award of Bonds.

A Bond shall be sold at a price of not less than par. Bids for a Bond shall be solicited by the County Administrator from not less than three (3) financial institutions with at least seven (7) days advance notice to institutions so solicited.

Unless all bids are rejected, the County Administrator is authorized to award the Bond to the bidder offering the lowest net interest cost therefor; for purposes of this paragraph, net interest cost shall be determined by computing the total dollar interest cost from the date of the Bond to maturity and deducting therefrom the amount of the premium offered, if any, over and above the principal amount and adding thereto any fees or costs required to be paid by the County. In the case of a tie in net interest cost, the award of the Bond shall be based upon the flip of a coin. Notwithstanding the foregoing, no such award shall be effective unless a savings in debt service is achieved thereby.

The County Administrator shall not accept any proposal which requires an increase in the interest rate applicable to the Bond in the event of any change in state or federal law or an increase in the applicable interest rate in the event of a determination of taxability of interest on the Bond owing to acts or omissions of the County.

Upon the award of the Bond, there shall be published in a newspaper of general circulation in the County at least seven (7) days prior to the delivery of a Bond a Notice of Sale in form substantially similar to that appearing at **Exhibit C** hereto.

[End of Article V]

ARTICLE VI

DISPOSITION OF PROCEEDS OF SALE OF BONDS

Section 6.01

Disposition of Bond Proceeds Including Temporary Investments.

The proceeds derived from the sale of the Bonds shall be paid to the Treasurer of Newberry County, South Carolina, to be deposited in a separate Bond Account, and shall be expended and made use of by the Council to refund all or a portion of the Refunded Bonds as described in **Section 1.01** hereof and the costs of issuance of the Bonds. Any premium shall be placed in the sinking fund held by the Treasurer of Newberry County for payment of principal and interest on the applicable Bond and applied to the discharge of the first maturing principal on such Bond.

Pending the use of Bond proceeds, the same shall be invested and reinvested by the Treasurer of Newberry County in Authorized Investments. All earnings from such investments shall be applied, at the direction of the Council, either (1) to defray the cost of refunding the Refunded Bonds, and if not required for this purpose, then (2) to interest on the Bond from the proceeds of which such earnings were derived.

Neither the purchaser nor Holder of the Bonds shall be liable for the proper application of the proceeds thereof.

[End of Article VI]

ARTICLE VII

DEFEASANCE OF BONDS

Section 7.01 Discharge of Ordinance - Where and How a Bond is Deemed to Have Been Paid and Defeased.

If a Bond issued pursuant to this Ordinance, and all interest thereon, shall have been paid and discharged, then the obligations of the County under this Ordinance and all other rights granted hereby shall cease and determine. The Bonds shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances, viz.:

- (1) A third party fiduciary, which shall be any bank, trust company, or national banking association which is authorized to provide corporate trust services (the "Fiduciary"), shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment of the Bond Payment due thereunder; or
- (2) If default in the payment when due of a Bond Payment shall have occurred, and thereafter tender of such payment shall have been made, and at such time the Fiduciary shall hold in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of such payment; or
- (3) If the County shall elect to provide for the payment of a Bond prior to its stated maturity and shall have deposited with the Fiduciary, in an irrevocable trust, moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys (without reinvestment), which together with moneys, if any, deposited with the Fiduciary at the same time, shall be sufficient to pay the Bond Payments as the same shall fall due.

Neither the Government Obligations nor moneys deposited with the Fiduciary pursuant to this Section nor the payments thereon shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Bond Payments on a Bond; provided that any cash received from such principal or interest payments on Government Obligations deposited with the Fiduciary, if not then needed for such purpose, shall to the extent practicable be invested and reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the Bond Payments to become due on a Bond on the Bond Payment Dates, and interest earned from such reinvestments not required for the payment of the Bond Payments may be paid over to the County, free and clear of any trust, lien or pledge.

[End of Article VII]

ARTICLE VIII

FEDERAL TAX CONSIDERATIONS

Section 8.01 Covenants to Comply with Requirements of the Code.

The County hereby represents and covenants that it will comply with all requirements of the Code, and that it will not take any action which will, or fail to take any action (including, without limitation, filing the required information reports with the Internal Revenue Service) which failure will, cause interest on a Bond to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of a Bond. Without limiting the generality of the foregoing, the County represents and covenants that:

(a) All property provided by the net proceeds of a Bond will be owned by the County in accordance with the rules governing the ownership of property for federal income tax purposes.

(b) The County shall not permit the proceeds of a Bond or any facility financed with the proceeds of the Bond to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or (b) five percent (5%) or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

(c) The County is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of a Bond that do not conform to the guidelines set forth in Revenue Procedure 97-13.

(d) The County will not sell or lease the Improvements or any property provided by a Bond to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of the Bond.

(e) No Bond shall be federally guaranteed within the meaning of Section 149(b) of the Code. The County is not a party to any leases or sales or service contracts with any federal government agency with respect to the projects and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of a Bond.

Notwithstanding the foregoing, the County Administrator may determine that interest on a Bond shall be subject to federal income tax, subject always to Section 5.01 of this Bond Ordinance. In such case, the foregoing covenants and the remainder of this Article VIII shall be inapplicable.

Section 8.02 Qualified Tax-Exempt Obligation.

The County Administrator may designate a Bond as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3)(B) of the Code, upon advice of Bond Counsel.

Section 8.03 Ability to Meet Arbitrage Requirements.

Careful consideration has been given to the time in which the expenditures of the proceeds of each Bond authorized hereby will be made, and it has been ascertained that all of the money received from the proceeds of each Bond will be expended within the limitations imposed by Section 148(c) of the Code, so that the Council will be able to certify upon reasonable grounds that each Bond issued as a tax-exempt obligation is not an “arbitrage bond” within the meaning of Section 148(c) of the Code.

Section 8.04 Continuing Disclosure.

Pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended, the County covenants as to each Bond issued as a tax-exempt obligation hereunder to file with a central repository for availability in the secondary bond market when requested:

- (a) An annual independent audit, within thirty days of the County’s receipt of the audit; and
- (b) Event specific information within thirty days of an event adversely affecting more than five percent of revenue or the County’s tax base.

The only remedy for failure by the County to comply with the covenant in this Section 8.04 shall be an action for specific performance of this covenant. The County specifically reserves the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

[End of Article VIII]

ARTICLE IX

MISCELLANEOUS

Section 9.01 Severability of Invalid Provisions.

If any one or more of the covenants or agreements provided in this Ordinance should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 9.02 Successors.

Whenever in this Ordinance the County is named or referred to, it shall be deemed to include any entity which may succeed to the principal functions and powers of the County, and all the covenants and agreements contained in this Ordinance or by or on behalf of the County shall bind and inure to the benefit of said successor whether so expressed or not.

Section 9.03 Ordinance to Constitute Contract.

In consideration of the purchase and acceptance of a Bond by those who shall purchase and hold the same from time to time, the provisions of this Ordinance shall be deemed to be and shall constitute a contract between the County and the Holder from time to time of the Bond, and such provisions are covenants and agreements with such Holders which the County hereby determined to be necessary and desirable for the security and payment thereof. The pledge hereof and the provisions, covenants, and agreements herein set forth to be performed on behalf of the County shall be for the equal benefit, protection, and security of the Holders of the Bond, all of which shall be of equal rank without preference, priority or distinction of any Bonds over any other Bonds.

Section 9.04 Filing of Copies of Ordinance.

Copies of this Ordinance shall be filed in the offices of the Council, the office of the Clerk of Court for Newberry County, South Carolina (as a part of the Transcript of Proceedings) and at the offices of each of the Paying Agent and Registrar.

Section 9.05 Officials Authorized.

The Chairman and Vice-Chairman of the Council, the County Administrator, and the Clerk to Council are authorized hereby to take all such actions, not inconsistent with this Ordinance, as may be necessary to accomplish the purposes set forth in this Ordinance.

Section 9.06 Effective Date.

This Ordinance shall take effect upon its third reading and shall be forthwith codified in the Code of County Ordinances and indexed under the general heading “Bond Issue -- Not Exceeding \$1,125,000 General Obligation Refunding Bonds of Newberry County, South Carolina.”

ENACTED this __ day of _____, 2020.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, Newberry County Council

Attest:

Clerk, Newberry County Council

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned, Clerk to the County Council of Newberry County, South Carolina (“County Council”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance which was given three (3) readings on three (3) separate days, with an interval of not less than seven (7) days between the second and third readings. That each of said meetings was duly called, and all members of the County Council were notified of the same; that all/a majority of the membership were notified of each meeting and remained throughout the proceedings incident to the adoption of this Ordinance. Such Ordinance has not been amended, modified or rescinded as of the date hereof. The original of this Ordinance is duly entered in the permanent records of minutes of meetings of the County Council, in my custody as such Clerk.

The agenda for each meeting of County Council at which this Ordinance was read included consideration of this Ordinance and as such was, at least 24 hours prior to the commencement of such meeting, posted in a prominent place in the administrative offices of the County and provided to news media.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of the County, this _____ day of _____, 2020.

(SEAL)

Clerk, County Council of Newberry County,
South Carolina

First reading: June 17, 2020

Second reading: July 1, 2020

Third reading: July 15, 2020

(FORM OF BOND)
(FACE OF BOND)

TRANSFER OF THIS BOND IS RESTRICTED BY OF THAT CERTAIN AGREEMENT BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND _____ DATED _____, 2020, THE TERMS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE AS IF FULLY SET FORTH HEREIN. TRANSFER OF THIS BOND IS OTHERWISE UNLAWFUL AND UNENFORCEABLE.

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
NEWBERRY COUNTY
GENERAL OBLIGATION REFUNDING BOND
SERIES 2020_

No. ___ \$ _____

INTEREST RATE MATURITY DATE ORIGINAL ISSUE DATE
_____ %

Registered Holder: _____

Principal Amount: _____ DOLLARS

NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Holder named above or registered assigns, the Principal Amount stated above and interest thereon on such dates and in the manner provided herein.

This bond ("Bond") is issued in the principal amount of _____ for purposes authorized by and pursuant to and in accordance with the Constitution and Statutes of the State of South Carolina, including Article X, Section 15 of the Constitution of the State of South Carolina, 1895, as amended; Sections 4-15-10 to 4-15-180, inclusive, Code of Laws of South Carolina, 1976, as amended, as amended and supplemented by Act No. 113 of the Acts and Joint Ordinances of the General Assembly of the State of South Carolina for the year 1999, as amended, the County Bond Act (Chapter 15, Title 4 of the Code of Laws of South Carolina 1976, as amended), as amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended, the Refunding Act (Title 11, Chapter 15, Article 5 of the Code of Laws of South Carolina 1976, as amended), and an ordinance duly adopted by the County Council of the County, its governing body, on ___ day of _____, 2020 (the "Ordinance"). Capitalized terms used but

not defined herein shall have the meanings ascribed to them by the Ordinance. (This Bond is subject to redemption prior to maturity as follows: _____).

The principal and interest on this Bond (the "Bond Payments") shall be paid on _____, 20__ of each year, commencing _____, by the County Treasurer of Newberry County, as Paying Agent, to the person shown on the books of registration of the County as the Holder hereof on the Record Date in accordance with the following schedule:

The Bond Payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The Record Date for this Bond is the 15th day immediately preceding each Bond Payment Date.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinance. Certified copies of the Ordinance are on file in the office of the Clerk of Court of Newberry County and in the office of the County Council of Newberry County.

This Bond is payable from a tax levied on all taxable property within the County. For the prompt payment of the Bond Payment as the same shall become due, the full faith, credit, and taxing power of the County are irrevocably pledged.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer, or certain franchise taxes.

The Bond is issued in the form of one (1) fully registered Bond and is transferable, as provided in the Ordinance, only upon the registration books of the County kept for that purpose at the offices of the County by the registered Holder in person or by his duly authorized attorney upon, (i) surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered holder or his duly authorized attorney, and (ii) payment of the charges, if any, prescribed in the Ordinance. Thereupon a new fully registered Bond of interest rate and like principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of the Bond Payment due hereon and for all other purposes.

For every exchange or transfer of the Bond, the County may make a charge sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid with respect to such exchange or transfer.

It is hereby certified and recited that all acts, conditions, and things required to exist, happen, and to be performed precedent to and in the adoption of the Ordinance and in the issuance of the Bond in order to make the legal, valid, and binding general obligation of the County in accordance with its terms, do exist, have been done, have happened and have been performed in regular and due form as required by law; and that the issuance of the Bond does not exceed or violate any constitutional, statutory, or other limitation upon the amount of indebtedness prescribed by law.

IN WITNESS WHEREOF, NEWBERRY COUNTY, SOUTH CAROLINA, has caused this Bond to be signed by the manual signature of the Chairman of the Newberry County Council, attested by the manual signature of the Clerk to the Newberry County Council, and the seal of the County impressed hereon.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, County Council

Attest:

Clerk, Newberry County Council

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

REGISTRAR

By: _____
Authorized Officer

Authentication Date: _____, 20__

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common

UNIF GIFT MIN ACT -

TEN ENT - as tenants by the entireties

_____ Custodian _____
(Cust) (Minor)

JT TEN - as joint tenants with right of survivorship and not as tenants in common

under Uniform Gifts to Minors Act _____
(state)

Additional abbreviations may also be used though not in above list.

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(Name and Address of Transferee)

the within bond and does hereby irrevocably constitute and appoint _____ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

(Authorized Officer)

(Signature must be guaranteed by a participant in the Securities Transfer Agent Medallions Program (STAMP))

Notice: The signature to the assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

NOTICE OF SALE

Notice is hereby given that Newberry County, South Carolina shall deliver to (Purchaser) on (Date of Delivery) it's \$_____ principal amount General Obligation Bond, Series _____. The Bond has been sold to (Purchaser) at a price of _____ and an interest rate of ____%. The Bond matures on _____, 20__, at which time the principal thereof and interest thereon in the amount of \$_____ shall be due and payable.

Chairman, Newberry County Council